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Forty-fifth session

SUMMARY RECORD OF THE 1154th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 July 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of the Republic of Korea (CCPR/C/68/Add.1) (continued)

1. The CHAIRMAN invited the delegation of the Republic of Korea to answer the questions raised by Committee members.

2. Mr. Soo Gil PARK (Republic of Korea) thanked Committee members for their appreciation of his country's achievements in the field of human rights. Nevertheless, the questions members had raised revealed a number of misconceptions, due perhaps to a lack of information from the Government or deliberate attempts by certain parties to exaggerate isolated human rights violations.

3. The Declaration for Democracy of 29 June 1987 had truly been a turning-point in the history of the Korean people. The subsequent democratic reforms, embodied in the new Constitution, had made it possible for former dissident leaders to run for the presidency in 1992, for the press to criticize the Government without restrictions and for the human rights of all citizens to be guaranteed. In the recent National Assembly elections, the ruling party had almost lost its majority. The Assembly frequently investigated allegations of human rights violations and brought the Government to account where necessary.

4. Some of the comments made by Committee members did not seem to recognize the enormous changes which had taken place in the Republic of Korea. Seventeen laws had been declared unconstitutional by the Constitutional Court, which had also restricted the application of the National Security Law. Members had talked about "political prisoners": however, the legal experts of the Republic of Korea did not consider that people convicted of injuring police officers or throwing firebombs at State property could be considered political prisoners. Members had further described the National Security Law as the "de facto Constitution" and had inferred that the unrest in the Republic of Korea was so great as to make extraordinary measures necessary. That was simply not true.

5. Some of the material which Committee members had possibly used in preparing their questions - and one source in particular - was notable for its lack of objectivity, balance and accuracy. For instance, the source in question had stated that the two Koreas had registered the South-North Agreement with the Secretariat of the United Nations in March 1992 under Article 102 of the Charter of the United Nations. In fact, it was stated quite clearly in the Agreement itself that it was not to be considered an international accord. Moreover, the same source had alleged that the works of E.H. Carr and Bruce Cummings, let alone those of Marx and Lenin, were prohibited in the Republic of Korea. He had read those works himself as a student, and they were still widely available. The mere possession or reading of any book was not a crime in the Republic of Korea.

6. The relations between the two Koreas were among the most important factors affecting the human rights situation. The signing of the agreement on reconciliation, non-aggression, exchanges and cooperation and the joint declaration on the denuclearization of the Korean peninsula within the past year had raised hopes of a dialogue between the two sides. In May 1992, three bodies had been established to work on a basic agreement governing unification. However, the two sides' differences on the nuclear issue had hindered progress in the negotiations, although he hoped that a spirit of mutual compromise would yet achieve results. It was also to be hoped that an agreement would soon be reached on family reunion; at present, separated family members were not even allowed to telephone or write to one another.

7. The reunification of the Korean peninsula must be based on the three principles of self-determination, peace and democracy. His Government's plan was to establish a provisional Korean commonwealth, which would promote peaceful coexistence, national homogeneity and the economic, cultural and social integration of the two Koreas. The commonwealth would be composed of a council of presidents, a council of ministers, a council of representatives and a joint secretariat, as well as a resident liaison office in each capital. After that, the legislative body of the commonwealth - the council of representatives - would draft and promulgate a constitutional law for a unified Korea by means of democratic procedures. Finally, a general election would be held under the new constitutional law to elect a unified parliament and government. Unfortunately, however, the other side took a different approach to reunification, and it was thus difficult to predict the outcome of the current dialogue.

8. Mr. Kook Hyun YOO (Republic of Korea) said that many members had asked about the relationship between the Constitution of the Republic of Korea and the Covenant. Under article 6 (1) of the Constitution, the Covenant had the same effect as domestic law. He could not accept the claim that the guarantees contained in the Covenant might be overturned by subsequent domestic legislation, since such a suspicion underestimated the Republic of Korea's commitment to human rights and the increasing public awareness of the rights enshrined in the Covenant, thanks to the Government's public awareness campaign. Moreover, since the principal rights enshrined in the Covenant were also embodied in the Constitution, any conflicting domestic legislation would be deemed unconstitutional. If an individual claimed that his rights under the Covenant had been infringed, the court would normally rule on the basis of domestic legislation; in the rare cases where that was not possible, the Covenant could be invoked directly by the courts.

9. Article 37 (1) of the Constitution stated that the freedoms and rights of citizens could not be neglected on the pretext that they were not enumerated in the Covenant: it was his Government's official position that that article covered all the rights enshrined in the Covenant, except those in respect of which the Government had entered reservations.

10. In reply to Mr. El Shafei's question about the remedies available to persons whose human rights had allegedly been violated, he said that individuals were free to activate the procedures outlined in the Optional Protocol to the Covenant. In reply to Mrs. Higgins' question as to what measures the Government would take if the Committee expressed views on a case

under the Optional Protocol, he could only say that the Government would make every effort to reflect the Committee's views in its future legislation. Mr. Herndl had asked about the remedy of petitions: a complaint lodged by a petitioner would be dealt with by the relevant administrative agency and, if the petitioner was not satisfied with the result, he was automatically entitled to lodge a complaint with the court.

11. The Government of the Republic of Korea was endeavouring to establish a dialogue with North Korea while coping with a very real threat of destabilization and military provocation. Until the other side stopped using terrorism as an instrument of its foreign policy, his country was bound to retain the National Security Law. His Government did not agree with the view that North Korea's participation in the current dialogue was a sign of a change of heart. The National Security Law was strictly applied and interpreted in accordance with the Constitution and the Covenant: it was only used to counter subversive acts which endangered national security and the democratic order.

12. It had been suggested that article 7 of the National Security Law infringed the freedom of speech and the freedom of the press, art, creativity and education; such restrictions were far beyond its scope. It had further been alleged that articles 3 and 7 infringed the freedom of association. However, the latter articles prohibited only the activities of anti-State organizations which endangered national security. Article 10, which had also been criticized, was designed not to infringe freedom of conscience, but to obtain necessary information about criminal acts which threatened national security.

13. In order to preclude any abuse of the National Security Law, the Government had incorporated into it the substance of a decision of the Constitutional Court of April 1990, which had defined "activities endangering national security and survival" to cover explicit communist activities, infiltration of the national territory or an attempt to destroy the constitutional system. "Activities endangering the basic liberal democratic order" had been defined as activities which made it difficult to maintain majority rule exclusive of violence and arbitrariness and a legal order based on liberty and equality, or activities which destroyed the existing order. The term "anti-State organization" had been defined as covering organizations which purported to assume authority over the State on behalf of the Korean people or to overthrow the State of the Republic of Korea. It was not possible to be convicted under the National Security Law simply for harbouring or expressing communist ideas or for having a positive opinion about North Korea, provided that those sentiments did not lead to the commission of illegal acts.

14. Miss Chanet had asked about the definition of espionage under the National Security Law. The concept was actually defined in the Criminal Code as the collection, divulging and transmission of national secrets (which comprised not only military secrets, but also political and economic information) on the instructions of anti-State organizations or their members. The provision covered only information which might jeopardize national security, and it was not invoked unless there had clearly been an attempt to pass information to North Korea with the knowledge that the

information would endanger the Republic of Korea. People had been convicted under the National Security Law if they had attempted or advocated the overthrow of the Government by violent revolutionary means. In all cases, defendants had enjoyed the full constitutional safeguards which ensured a fair trial.

15. The amendment to the National Security Law was not retroactive: the old law still applied to acts which had taken place before the amendment. The country's legal experts considered that amendments should not be retroactive unless they were designed to redress wrongs or eliminate contradictions in the existing law.

16. Members of the Committee had asked about the role of the prosecutor's office. Prosecutors were officials of the executive branch, coming under the authority of the Ministry of Justice, and were guaranteed independence by the Prosecution Organization Act. Prosecutors had to possess the same qualifications as judges, pass a highly competitive examination and complete a two-year training course. In order to preserve their political neutrality, they could not be suspended except by impeachment or conviction for certain crimes, and their salary levels were guaranteed. They were responsible for investigating and prosecuting cases, supervising the police and submitting requests to the courts for the application of the law. Prosecutors working on public security cases did not possess any special qualifications. A body called the National Security Planning Agency gathered domestic security information about communist and subversive activities and conducted investigations in a limited number of cases, including alleged violations of the National Security Law.

17. There were three levels of court - district courts, high courts and the Supreme Court, as well as the Constitutional Court and military courts. The Constitutional Court ruled on the constitutionality of the law, impeachment cases, the dissolution of political parties and conflicts of jurisdiction. Judges served for 10 years, and could be reappointed for further terms. They could not be dismissed except by impeachment or conviction for certain offences, and their political activities were restricted.

18. Mr. Herndl and other members had remarked on the small number of grounds for possible discrimination laid down in article 11 of the Constitution. He wished to make it clear that the list was a purely indicative one, and other grounds, such as differences in political opinion, were not excluded.

19. Mr. Aguilar Urbina had inquired about a foreigner's right to hold public office. Foreigners were not guaranteed the right to hold public office, but the Government did employ foreigners on a contract basis. Only citizens of the Republic of Korea were entitled to vote or engage in political activity.

20. Miss Chanet had asked what constituted "reasonable cultural discrimination": that term was intended to cover differentiation based upon a person's educational accomplishments.

21. A question had also been asked about the de facto status of women. Despite the advances in women's status, most female workers were still in low-paid jobs, and there were few women in senior academic posts. There were

not enough State child-care facilities for low-income families, and the traditional discrimination against women still lingered on. The Government had endeavoured to eliminate the traditional stereotypes, promote women's participation in social and economic activities and increase welfare facilities.

22. Under the 1945 Nationality Act, women were obliged to take their husband's nationality on marriage and to be naturalized if the husband was naturalized. The Republic of Korea had lodged a corresponding reservation to the Convention on the Elimination of All Forms of Discrimination against Women. However, the Government was considering an amendment to the Nationality Act to bring it into line with international standards.

23. Concerning the protection of human rights under a state of emergency, article 37 (2) of the Constitution stipulated that, even if it were necessary to restrict certain rights, it was not permissible to restrict the "essential aspects" of a freedom or right. That term safeguarded all the rights referred to in article 4 (2) of the Covenant. Under article 76 of the Constitution, the President could issue an emergency order in times of insurgency, external threat, natural calamity or serious financial or economic crisis. If the National Assembly subsequently found that the emergency order was not justified, it would be revoked forthwith.

24. Mr. Prado Vallejo had asked about the definition and application of the terms "national security", "maintenance of order" and "public welfare" with reference to the imposition of restrictions in certain, very limited circumstances laid down in the Constitution, the Criminal Code and the National Security Law. "National security" meant the countering of foreign aggression and the safeguarding of the liberal democratic order. "Maintenance of order" meant the preservation of the public and social order necessary for a normal life. "Public welfare" referred to the interests and well-being of the public. The term was used in a positive sense which went beyond the maintenance of order, being used in laws concerning economic and social rights, the environment, land use, town planning and the protection of green spaces.

25. Mr. Dimitrijevic had asked about the law on abortion. Although abortion was penalized under the Criminal Code, the Maternal and Child Health Act permitted exceptions in cases of rape, incest and threats to the health of the mother. The Government was considering an amendment to the Criminal Code to take those exceptions into account. The reference in the report to abortions for eugenic reasons (CCPR/C/68/Add.1, para. 110) covered cases where the foetus was severely deformed.

26. Turning to the subject of the death penalty, he said that, besides the offences covered by the National Security Law, 15 crimes were subject to the death penalty under the Criminal Code. As Miss Chanet had noted, the death penalty could be imposed in cases of robbery, but that would not happen unless there were vile aggravating circumstances. The death penalty was a rare exception, not the rule, in the Republic of Korea. The Government had already considerably reduced the number of capital offences and intended to progress further in that direction.

27. Members of the Committee had referred to a claim that 50 offences under the National Security Law were subject to the death penalty. However, the National Security Law dealt with only one crime - anti-State activities which endangered national security - and many offences referred to in the law, such as murder for the purposes of insurrection, were also covered by the Criminal Code. Under the Penal Administration Act, the death penalty was carried out by hanging.

28. Several members had raised the question of protection against torture and inhuman treatment. The courts would not accept a confession unless it could be proved beyond reasonable doubt that it had been made voluntarily. Following an investigation into the unnatural death of Jong Chul Park in January 1987, five police officers had been convicted and sentenced to prison terms of between 3 and 10 years. In response to Mr. Wennergren's question about the number of police officers who had been convicted of torturing prisoners, he could say that six officers had been sentenced to prison for 2-10 years, 14 had received suspended sentences and 9 more cases were awaiting trial. Places of detention were inspected regularly: prosecutors inspected the detention premises of the investigative authorities at least once a month, and the Ministry of Justice inspected all prisons at least 10 times a year. Any complaints of inhuman treatment were investigated immediately by the prosecutor's office.

29. Miss Chanet had referred to the case of Ki Rae Park. His conviction had been based on objective evidence, and not on a confession extracted under torture, as had been alleged. Ki Rae Park's prison sentence had been reduced for good behaviour, and he had been released on probation on 25 May 1991.

30. Mrs. Higgins had inquired about the situation of long-term prisoners. Such prisoners had been convicted of attempts to overthrow the Government by violence or to disrupt the liberal democratic political system. The Government could not afford to release prisoners unless it was sure that their release would not jeopardize national security. It therefore considered every application for early release on its merits.

31. Several questions had been raised about the period of detention as referred to in paragraph 154 of the report. The term referred to the time that elapsed between the date of arrest and the date of the final court judgement. Such detention could not exceed six months and the court must render its judgement during that period or release the suspect. In response to the question on how the court reviewed the legality of a detention, he said that a suspect detained pursuant to a warrant, or his lawyer, legal representative, spouse or other family member, cohabitant or employer, could submit an application for an examination of legality to an appropriate court. The court must then examine the case promptly and either dismiss the application or order the release of the detainee. The prosecutor, the defence counsel and the applicant could appear before the court and present their views. Arrest or detention must be followed immediately by notification of the detainee's family.

32. Several questions had been raised in connection with article 10 of the Covenant, concerning treatment of prisoners, and also in that context inquiries had been made about the correctional education of inmates, which

also had implications for articles 18 and 19. As well as punishment, the purpose of the correctional system was the prevention of further crimes and the rehabilitation of prisoners. To accomplish the latter, inmates received correctional education aimed at cultivating sound civic values with a view to preventing the recurrence of crimes. Such prison education programmes were a common feature of almost all modern prison systems. Inmates incarcerated under the National Security Law also participated in correctional education programmes, including exchanges of views about competing ideologies, the goal being that a prisoner's re-entry into society should not pose a problem for the country. Comparative discussion of ideologies in the hope that a prisoner would absorb democratic ideals did not constitute "forced conversion". Inmates whose beliefs, if translated into action, might pose a threat to the Republic were not eligible for parole. Apart from that exception, all inmates received equal treatment and had equal rights, including family visits. No special restrictions were imposed on those who had violated the National Security Law. Meetings with relatives and friends lasted for 30 minutes and the period could be extended on request if approved by the prison authorities.

33. Unconvicted detainees were entitled to meet relatives once a day. The Constitutional Court had decided, in January 1992, that article 62 of the Penal Administration Act was unconstitutional because it prohibited an unconvicted detainee from meeting his attorney without being accompanied by a prison officer. The Government planned to revise the relevant laws and regulations in order to reflect that decision. The term "sound national spirit", which had given rise to questions, was an attempt to render the original Korean and should be interpreted as the restoration of a prisoner's moral sense. The term "voice prevention tool" also used in the report meant a gag, as commonly used in many countries.

34. In connection with article 12, on freedom of movement, Mr. Ando had asked a question about visits to North Korea by South Koreans. Since the hope of peaceful reunification had yet to be fulfilled, some restrictions were placed on travel to North Korea, in accordance with paragraph 3 of article 12, which provided for restrictions on freedom of movement for reasons of national security. The Government hoped that it would soon be possible for the restrictions to be lifted. The Special Act Governing Intra-Korean Exchanges and Cooperation already authorized visits to North Korea for certain specified purposes with government approval. Regarding the registration of residence, a statute called the Residence Registration Act applied.

35. A question had been asked in connection with article 13 about the treatment of Vietnamese boat people. The Government was working with UNHCR to provide humanitarian assistance to boat people until they could be resettled in their country of ultimate destination or a third country willing to accept them. So far, about 1,220 boat people had been resettled in third countries after arriving in the Republic of Korea. One hundred and forty-five boat people were still residing in a temporary accommodation camp.

36. In response to several questions about article 14 of the Covenant, he said that the Republic's Code of Criminal Procedure was based in part on the Anglo-American adversary system. It provided for the right to assistance by defence counsel and the right to remain silent. The suspect could designate his own counsel and communicate with him, and counsel could participate in the

execution of search warrants, evidentiary procedures and reviews of the legality of arrests. There were no exceptions to a suspect's right to communicate with counsel. He noted that the last sentence of paragraph 153 of the report, on speedy trial, should be deleted.

37. In response to inquiries about the military courts, he said that the Military Court Act specified the procedures to be applied by military justice and guaranteed the fundamental rights of the defendant in the same way as the civil courts' Code of Criminal Procedure. The only exception was the right to appeal. For certain specified crimes, in particular espionage, the military court was the court of final instance. However, if a defendant was sentenced to death, a mandatory appeal to the Supreme Court was guaranteed regardless of the charge. Civilians were rarely subject to military justice, but it could apply to civilians who committed such crimes as military espionage, supply of contaminated food to soldiers, and unlawful activities in respect of prisoners of war and sentries under martial law. In that connection, the phrase "extraordinary law" in paragraph 211 of the report should read "extraordinary martial law", as declared in states of siege or on the outbreak of war.

38. A question had been asked in connection with article 19 about the protection given to freedom of expression. He emphasized that the Republic of Korea did not practise censorship. There was no list of prohibited books. The writings of Marx and Lenin, together with other communist works, were freely available in bookstores and university libraries. Nor was there any censorship of academic conduct. The confusion on the issue could be traced to a provision of the National Security Law imposing restrictions on propaganda that could destabilize the Republic. The publication, copying, transportation or dissemination of propaganda for the purpose of jeopardizing national security was forbidden.

39. As far as preventive censorship in other media was concerned, three laws - the Performance Act, the Movies Act and the Act Concerning Records and Video Materials - imposed very limited restrictions on movies, records and tapes for the purpose of maintaining public order and morality. They were fully in accordance with both the Constitution of the Republic and article 19 of the Covenant. Film producers were required to register and films were classified, as in many other countries, to protect children from indiscriminate sex and violence. Under the Performance Act, scripts and scenarios written by nationals of countries with which the Republic had no diplomatic relations were reviewed by the Performance Ethics Committee, which was composed of civilian specialists.

40. A question had been raised by Mrs. Higgins about the requirement for advance notice of public assembly. On receiving notice of an assembly or demonstration, the police examined it to see whether the gathering would occur at a prohibited time and place and whether it would disrupt traffic. As long as it conformed to the regulations, the assembly or demonstration could proceed as scheduled. If it had the potential to create violence or posed a clear threat to public order and safety, a prohibition order was issued, nullification of which could be sought in the courts. In determining the potential for violence, all the relevant circumstances were reviewed, including the purpose of the assembly or demonstration, the organizers' past record, their capacity to control the demonstrators and the plans for the

demonstration, for example, whether attacks on public agencies appeared to be contemplated. On 1 June 1991, the Government had established an Assembly and Demonstration Consideration Committee and had issued objective standards for limiting prohibitions on assemblies with a view to the better protection of human rights.

41. In reply to the question by Mr. Mavrommatis concerning the provision prohibiting certain teachers and journalists from joining certain political parties, he said that the Government was of the view that strict impartiality in party politics was required of teachers and journalists. The Government also considered that the Political Parties Act was compatible with article 25 of the Covenant. However, when a specific case involving that article was brought before a court, the court would have the opportunity to examine the Government's opinion.

42. A question had been asked about the grounds for the dissolution of political parties. Article 8 of the Constitution stated that, if the purpose or activities of a political party were contrary to the fundamental democratic order, the Government could bring an action for its dissolution in the Constitutional Court and the political party would then be dissolved or not in accordance with the Court's decision. Under that provision, a communist party which intended to create a communist regime through a revolution of the proletariat was banned.

43. A question had been asked under article 24 of the Covenant about safeguards against child labour. The Government was making every effort to prevent the employment of children in bars or in the entertainment business. Those efforts included educational seminars for management and the inspection of premises.

44. In reply to Mr. Herndl's question about minorities, in connection with article 27, he said that Korea was a homogeneous nation with a distinct population sharing a common language and culture and more than 4,000 years of history. There were, however, approximately 51,000 resident foreign nationals, of whom 23,500 were Chinese. In 1991, about 80 people had become naturalized citizens, most of them being of Chinese origin. All of them enjoyed fundamental human rights in every field, pursuant to the Constitution and to the Covenant.

45. In conclusion, he thanked the members of the Committee for their thoughtful and thorough questions and comments on human rights in the Republic of Korea.

46. The CHAIRMAN invited the members of the Committee to comment on the replies to their questions.

47. Mr. WENNERGREN thanked the delegation of the Republic of Korea for its very helpful replies, which he believed had given the Committee a better understanding of the situation regarding human rights in Korea. Nevertheless, although on the face of it the country's Constitution seemed to contain all that was required for a democratic state under the rule of law, the situation was not entirely clear. For example, he had some difficulty understanding why the right to freedom of opinion was not specifically mentioned in the

Constitution. There was a conceptual tradition in that field, and to claim that freedom of opinion was covered by the right to freedom of conscience did not altogether satisfy the requirements of the Covenant. The argument that the so-called umbrella clause, article 37 of the Constitution, whereby various rights and freedoms were not to be neglected on the grounds that they were not enumerated, covered the point was not adequate. To ensure real freedom of thought and freedom of opinion a solid structure of explicit rules was needed.

48. Article 37 went on to say that the freedoms and rights of citizens could be restricted by law when necessary, but that even when such restriction was imposed, no "essential aspect" of the particular freedom or right should be violated. He hoped that when the second periodic report was presented that term would be fully explained. The freedoms and rights referred to in article 37 were all enshrined in the Covenant and it should not be necessary to say in the Constitution that they should not be neglected.

49. He noted from the reply regarding judicial supervision of detention that complaints could be made to the court, which was then obliged to review the matter. According to article 9 (3) of the Covenant, however, anyone arrested must be brought promptly before a judge and the detainee or his relatives should not need to make a special request. The Government should take steps to bring the rules regarding detention into compliance with article 9 (3). He also noted that there was no mention of the security police in the Criminal Procedure Act, although it was important for detention under the National Security Law also to be subject to judicial supervision. That point too should be addressed in the second periodic report. He recognized that the area was a difficult one for most countries, all of which possessed a secret police but were loath to discuss the matter. Nevertheless, citizens were entitled to protection in that respect also and it was not clear from the report and the replies what the real situation was in the Republic of Korea.

50. The Committee had learned a great deal from the report and the highly informative replies to its questions and he looked forward to learning still more from the second periodic report. He hoped that the delegation of the Republic of Korea had also learned what was needed to bring all its procedures into full compliance with the Covenant.

51. Mrs. HIGGINS thanked the delegation for its painstaking and detailed replies to the Committee's questions. She believed she was typical of the Committee members as a whole in sensing a forward movement in the Republic of Korea and a significant shift of approach. She assured the delegation that the Committee's comments were intended only to help advance that process. She also assured the delegation that while the members of the Committee received information from a variety of sources, thus did their own research and made their own assessments. She was gratified that the Republic of Korea had become a party to the Covenant and that it had accepted the Optional Protocol, as well as joining ILO. She was also pleased to learn that consideration was being given to the possibility of withdrawing its reservations to the Covenant. She had been impressed to hear about the progress that had been made in regard to legal aid and towards narrowing the scope of operation of the National Security Law. She had learned that internal dissent was now possible and that the Constitutional Court was playing a vigorous and independent role. At the same time, it was evident that more needed to be

done. The next task should be to check existing and pending laws systematically not just for constitutionality but for compliance with the Covenant. As had been pointed out, the Constitution itself did not altogether cover all the rights enshrined in the Covenant.

52. Notwithstanding the narrowing scope of the National Security Law, she was still concerned that a continuing need was felt for such a law. It had been explained in the reply that the underlying objective was to eliminate and control the activities of anti-State organizations in order to prevent the building up of a non-democratic, specifically a communist, State. Ultimately, that could only be done by winning the hearts and minds of the people. The ordinary law should be able to cope with activities of the kind referred to. She noted that, for instance, the crime of homicide was already covered by the Criminal Code and could be dealt with through the ordinary law. She felt similar concern about the Security Surveillance Law. The broad definition of State secrets in connection with the definition of espionage was potentially open to abuse.

53. She hoped that the list of offences liable to the death penalty, mentioned in connection with article 6 of the Covenant, could be further reduced. The rehabilitation of prisoners was also a matter of continuing anxiety. She felt that education and discussion of the kind described and the conditions for governing release did not constitute rehabilitation in the normal sense but rather coercion and an infringement of the provisions of the Covenant in regard to freedom of conscience. In the case of the advance permission needed for assemblies and demonstrations, she suggested that a permit should only be required if the assembly was actually to take place in an unacceptable location. Otherwise, there should be freedom of assembly. In the context of the control of torture and the allegations made in that connection, the information provided on the National Security Planning Agency and the outcome of prosecutions was of great interest. The real problem in regard to detention was the period allowed for interrogation before charges were laid. She was aware of the findings of the Constitutional Court but her understanding was that, as a general rule, detention could last for a full 20 days within the jurisdiction of the National Security Planning Agency plus 30 days within the jurisdiction of the Public Prosecutor. That represented a very long time before access to the judiciary, not to mention the fact that the activities of the Agency did not seem to be subject to identifiable democratic controls or access to the usual organs of recourse. Article 9 (3) of the Covenant spoke of the duty to bring a detainee to trial "within a reasonable time". The period she regarded as reasonable was very significantly shorter than the period which seemed to operate under the National Security Law.

54. In conclusion, she thanked the Government of the Republic of Korea again for its very well-prepared initial report and congratulated the delegation on its excellent contribution to the discussion.

55. Mr. MYULLERSON thanked the delegation for its admirable endeavours to answer the many questions put by Committee members. He had, however, been surprised by the sharpness of the responses to some of the questions asked. He did not think that it was at all the opinion of the Committee that there

were no rights in the Republic of Korea. Many concerns had of course been expressed, but members of the Committee had also spoken of the progress that had been made, especially recently.

56. One of his own concerns was that visits to North Korea could only be undertaken with the permission of the authorities in the Republic of Korea. Such restrictions were not reasonable and not in conformity with the Covenant. Surely such visits would merely contribute to reunification of the Korean peninsula. A truly democratic country might fear the threat from a totalitarian State but should not need to fear the ideas held in such States.

57. His main anxiety was about some of the laws in force in the Republic, especially the National Security Law. Such a law ought to be superfluous since, as Mrs. Higgins had pointed out, ordinary and more specific criminal laws should suffice to deal with offences against national security. The Law was very loosely phrased, using such broad concepts as "sound national spirit", which were open to a variety of interpretations.

58. Again, the delegation had said that propaganda jeopardizing national security was prohibited. Acts could certainly jeopardize security, but it was not clear to him how propaganda could do so. There was a danger that such concepts could be used against those who merely held different views.

59. The number of crimes for which the death penalty could be imposed was still rather high, and he hoped that it would continue to be reduced.

60. With regard to the Committee's attitude to NGO reports, the members were used to drawing on material from a variety of sources in assessing State party reports. They did not, however, take it all at face value and only accepted it when there was supporting evidence from other sources, often in fact asking Government delegations for their comments.

61. In conclusion, he congratulated the Republic of Korea on its accession to the Covenant and its ratification of the Optional Protocol. It had submitted a good report and had engaged in helpful discussion. He hoped that the outcome would be still further improvements in the human rights situation in the Republic. No country offered a safe haven for human rights, and there was always room for improvement.

62. Mr. HERNDL thanked the delegation for its comprehensive report and its replies to the many questions put by members of the Committee, who all welcomed the accession of the Republic to the Covenant, its ratification of the Optional Protocol and its accession to membership of ILO. There had clearly been a fundamental change in the human rights situation in the country with the introduction of its new Constitution.

63. While the political situation in which the Republic found itself must undoubtedly have implications for public order, the importance of such a situation should not be overemphasized, and every effort should be made to manage it by use of the ordinary criminal law, as Mrs. Higgins had urged. Like previous speakers, he had some lingering doubts: was the National Security Law really necessary? And should not an effort be made to reduce the number of crimes for which capital punishment could be imposed? The fact that

there had been 82 executions over a period of 10 years was difficult to reconcile with the spirit of the Covenant. In all countries there was a permanent need to keep police activities under surveillance, and the delegation must be conscious of that need in the Republic of Korea too. The long periods of detention practised under the National Security Law must also be a cause for concern.

64. In conclusion, he emphasized that comments by members of the Committee were always intended to assist Governments in adopting policies to enhance the enjoyment of human rights.

65. Miss CHANET thanked the delegation for its well-constructed report and expressed appreciation of its endeavours to respond to the many questions asked by members of the Committee.

66. It was a matter for concern that, according to NGO reports, a considerable number of political prisoners - whom she would rather call "prisoners of opinion" - were still being held in the Republic. As to the plots to overthrow the Government to which the delegation had referred, the overthrowing of Governments was a legitimate objective of opposition parties and an essential part of the democratic process; it was only reprehensible when violence was used to that end. For her, holding "prisoners of opinion" in detention seemed dangerously like imprisoning the political opposition. Such appalling acts as the destruction of Korean Air flight 858 by terrorists, which had been mentioned in defence of the National Security Law, were utterly deplorable, but many other States had also been victims of terrorism, and such acts did not warrant sweeping limitations of the rights of citizens. The Covenant provided for some flexibility in emergency situations but it should not be so broadly interpreted as to justify restrictions on the basic rights and freedoms of citizens.

67. Nor was she fully satisfied with the information given to members of the Committee on articles 4 and 7 of the National Security Law, which were so vaguely drafted, for example with regard to espionage, as to leave the Government wide discretion in such matters as assessing the damage caused to the State by the divulging of secrets. Citizens appeared to be left in doubt as to whether or not, in engaging in particular actions, they were violating the Law. Such legislation posed problems in relation to articles 15, 18 and 19 of the Covenant.

68. In spite of the explanations given, she continued to be concerned about the number of cases in which the death penalty could still be incurred, whether under the National Security Law or the Criminal Code. For instance, the inclusion of robbery among capital offences certainly seemed to contravene article 6 of the Covenant, which restricted the death sentence to "the most serious crimes". Even if judges in practice refrained from imposing that sentence, it did not appear justified to retain it on the statute-book in so many cases. She associated herself with Mr. Wennergren's remarks about the National Security Planning Agency, and with the disquiet expressed by Mrs. Higgins and Mr. Herndl about the duration of pre-trial detention.

69. In conclusion, she expressed gratification that the human rights situation in the Republic had improved and that the Government was advancing towards a truly democratic system guaranteeing the rights and freedoms of individuals.

70. Mr. ANDO expressed gratitude to the delegation for its painstaking efforts to answer the questions asked by members of the Committee. As previous speakers had said, the primary purpose of the reporting procedure was to permit a constructive dialogue with States and to explore ways in which any human rights problems that existed could be solved. The Committee could be thought of as holding out a helping hand to fellow human beings in difficulty.

71. Despite the clarifications given, he continued to share a number of the concerns expressed by previous speakers. One was the persisting inequality of the sexes. He understood the difficulties posed by Confucian and other historical traditions, but the objective of social policy must be to achieve conformity with the goals of the Covenant. He also felt disquiet over the excessively long periods of pre-trial detention; that was clearly a matter that called for review. As to the treatment of prisoners, he could see no justification for attempting to change their beliefs or convictions by pressure, even in the context of endeavouring to inculcate democratic ideas. Any kind of coercion, whether physical or philosophical, was inadmissible. Moreover, under the right of association, teachers and journalists should be free to join the political party of their choice. Since the Republic of Korea had recently become a member of ILO, it was to be hoped that the many conventions of that organization would provide guidelines for future policy. Despite the explanations given, he was still not convinced that the application of the National Security Law did not impair human rights. Its very vague wording and wide scope, particularly in relation to anti-State activities, constituted a particular danger.

72. While he recognized the difficulties resulting from the existence of North Korea and its policies, which were perhaps not always fully appreciated by those who had not visited the Republic, it was important to realize that changes were occurring, and that what was essential above all else was to persuade others that democracy was preferable to any other political system and to demonstrate it by a conduct of affairs in sharp contrast with that of dictatorships. Like Japan, the Republic of Korea had made great economic progress in a short space of time. Such progress, however, generated its own problems and often brought capital and unions into confrontation. It was essential for both sides to learn from one another so that they could achieve a genuinely free market system working to maximum efficiency. Again like Japan, Korea was a homogeneous society, and in spite of the advantages of such societies, it was particularly difficult for them to learn how other people thought and behaved. The pursuit of human rights was one of the ways of developing tolerance and understanding of those with different ideas and backgrounds. There was no doubt that the Republic had set out on the right road and made a clear break with certain attitudes of the past. He was confident that, when it presented its next report to the Committee, further improvements in the human rights situation would be apparent.

73. Mr. AGUILAR URBINA said the facts that the Republic of Korea had acceded to the Covenant, ratified the Optional Protocol and joined ILO, and that it had sent a high-level delegation to present its report to the Committee all testified to its willingness to advance towards better implementation of human rights. While he was grateful to the delegation for its efforts to respond to questions put by Committee members, he felt some uneasiness about some of the answers and explanations given, which were not quite those expected. He was

particularly concerned about the National Security Law, which seemed to him to reflect practices that pervaded the legislation of the Republic. The definitions used were often so broad as to be hardly definitions at all. The legislation did not concretely define a great number of concepts affecting the enjoyment of human rights - for example, what comprised anti-State organizations under article 2 of the National Security Law and article 37 of the Constitution - and it would be possible to make a virtually endless list of uses in the report itself and in a whole series of laws. Mr. Park had spoken of aspects of the past that had been eliminated, but Mr. Yoo had conceded that vestiges of traditional discrimination against women still remained. Great changes had been and were being made, and the present was a transitional period, and a period of hope. But in such periods it was necessary to win hearts and minds, as Mrs. Higgins had put it. That was the main task facing any democratic system. It was not by such laws as the National Security Law with its broad definitions that such a victory could be won.

74. He was concerned over what had been said about the application of the death penalty. In answer to the claim that there were 50 crimes for which that penalty could be imposed under the National Security Law, it had been stated that in fact there was only one crime - anti-State activities that endangered State security. That answer gave grounds for even graver concern since it appeared, in view of such a breadth of definition, that, instead of 50 crimes more or less specifically defined, there were an infinite number of acts that might be considered crimes that could attract the death penalty. He had similar concerns relating to the inclusion of theft among the crimes for which the death penalty could be imposed. Mr. Yoo had said that it would only be so punished if it had been committed with vile aggravating circumstances, but what such circumstances might be had not been indicated. It was that uncertainty about what was in practice against the law that he regarded as a vestige of the past. He accepted the assurance that such vestiges were disappearing, and he hoped that that process would be completed in the near future. There were still considerable discrepancies between the Covenant and the legislation of the Republic in its present form, and there was a clear need for revision. The Covenant was in general an expression of the democratic system to which the Republic was aspiring. In the National Security Law among others there was a series of limitations relating to anti-State organizations and many references to communism and communists. A joke he had heard recently asked what was the difference between United States and Russian democracy, the answer being that in the former the Communist Party was allowed to exist. The United States Constitution was in fact one that acted as a bulwark to freedom. The United States had, in acceding to the Covenant, made a reservation to article 19, and, unlike most such reservations, it was one that could only arouse respect, namely that, in the United States view, the article placed unwarranted limitations upon the exercise of freedom of expression. The National Security Law, on the other hand, was in his opinion unacceptable and in flagrant contradiction with the Covenant. Another such matter was the re-education to which prisoners were submitted in order to ensure their fitness to re-enter democratic society after their release. Such attempts to change people's ideas and opinions by pressure were clear violations of human rights and were incompatible with article 14 of the Covenant. A much more effective means for the Republic to achieve the objectives it had set itself would be to have no such laws as the

National Security Law and to welcome the fact that prisoners re-entering society enjoyed full freedom of criticism, for improvements could only be achieved when people were free to criticize the existing order.

75. Mr. PRADO VALLEJO said he found the dialogue to have been generally positive, and commended the cooperative attitude displayed by the delegation of the Republic of Korea, where progress had undoubtedly been made in the guarantee and exercise of human rights. It seemed clear, none the less, that there were ingrained habits of thought and deeply-rooted customs to be overcome before the provisions of the Covenant, and more particularly article 2, paragraph 2, were fully complied with.

76. He noted with special concern the excessively broad interpretation given in the Republic to the notion of public emergency. The possibility of restricting rights by law when that was deemed necessary for "public welfare" was most disquieting: that was certainly at variance with articles 4 and 9 of the Covenant.

77. As remarked, the National Security Law seemed to leave the way open for abuses both in interpretation and application. He referred especially to the provisions concerning detention, which could be imposed for activities vaguely qualified as dangerous to national security and the survival of the State, of the repressive and authoritarian manner in which political prisoners and prisoners of conscience were considered and treated, even after serving sentences, and of the unduly lengthy periods during which persons could be held without trial, as well as the delays which virtually paralysed the investigation of allegations concerning abuses, including torture, committed by police and other officials. The number of offences for which the death penalty could apparently be imposed was also alarming.

78. That being said, he acknowledged the endeavours of the Government in a situation that still bore the scars of past events. There were welcome signs of social renewal that could encourage the fuller flourishing of human rights. It was especially to be hoped that, against the worldwide background of crumbling dictatorships, especially in the East, further progress would soon be made in dismantling the barriers that separated the two countries of the Korean peninsula and in striving towards the unity that was the earnest desire of all people of goodwill.

79. Thanking the delegation of the Republic of Korea for its detailed replies to questions, Mr. DIMITRIJEVIC assured its members that in dealing with reports submitted by States parties, the Committee had always endeavoured to display an understanding and helpful attitude. He wished to dispel any suggestion that some of the remarks made had been deliberately negative, adding that members of the Committee were no more immune than others to journalistic distortion.

80. It appeared to him that in the structures of government of the Republic of Korea there remained persistent apprehension concerning a perceived imminent threat of totalitarianism from outside the country, and that such apprehension continued to fuel a logic which was at variance with ideas fundamental to the Covenant. For example, he had been struck by the phrasing of the third sentence of paragraph 103 of the report, where rights that should

be guaranteed under all circumstances were presented as exceptional, at least where crimes subject to the death penalty were concerned. He earnestly hoped that the apprehension and the consequent logic to which he had alluded would soon be relegated to the past: the ideology once so greatly feared as terribly contagious had lost its virulence, and there now seemed to be very little risk to the Republic of Korea of contamination by ideas.

81. Much concern had been voiced over the issue of legality, the principle of nullum crimen sine lege, nulla poena sine lege, and the provisions of article 15 of the Covenant. Even non-lawyers, considered the law as an essential means of achieving certainty and predictability and of guiding behaviour in society. He had the impression that in the Republic of Korea, the National Security Law failed to provide such orientation; as well as lending itself to various types of abuse in the form of revenge, denunciation, defamation and so on, it perpetuated uncertainty as to what was permissible, anxiety about such matters as the confidentiality of information, and misgivings about what constituted an offence. As a consequence, many people in the Republic, particularly the young, could be at a loss to know what kind of behaviour was actually encouraged, supported or tolerated by the State, and what was considered anti-social or dangerous. Added to that were the disquieting phenomena of indeterminate surveillance of persons who had already been sentenced and punished, the exercise of pressure to recant beliefs, and unwholesome inquiry into what was happening in people's minds.

82. It must be acknowledged that the Republic of Korea had fared better, both socially and economically, than certain other divided countries, and its achievements commanded respect, but surely it could now abandon some of the defensive imperatives of the past and rely more strongly on a more firmly-rooted democracy informed by the law. No nation in the world was completely free of extremist political fringes, whether of the right or of the left, but in democratic societies they were generally rendered impotent by tolerance.

83. In conclusion, he praised the quality and structure of the report presented by the Republic of Korea, which was certainly not unique among those submitted by States parties in being somewhat short on facts. He thanked the delegation and trusted that it would have found the dialogue useful.

84. Mr. SADI noted with satisfaction that as a result of the political decision to introduce human rights in accordance with the Covenant, an embryonic human rights culture now existed in the Republic of Korea. Continuing tension with its northern neighbour was no doubt hampering implementation, and the consequences of that political decision had, perhaps understandably, not yet fully reached down to other parts of the system, notably the police and security services, where a campaign of education was undoubtedly called for. The Committee would certainly wish to see improvements occurring at a faster pace, and hoped that due account would be taken of its views.

85. Mr. NDIAYE said that the Republic of Korea had incontestably made considerable progress - most notably in the economic field, although its achievements in the field of human rights were far from negligible. It was unfortunate that, as a consequence of difficulties with its neighbours,

actions were not always compatible with the provisions of the Covenant. It also appeared that the ancient question quis custodiet ipsos custodes remained relevant in many instances, and should indeed be posed. There was certainly much room for a further extension of nascent liberties. It seemed likely that unification of the two Koreas would eliminate many problems, but in the meantime he would urge the authorities of the Republic to make every effort to return to a system of laws more compatible with the Covenant.

86. He had noted with interest references in the report to the importance of traditional customs; however, he would respectfully suggest that tradition could be synonymous with immobility, and that the more forward-looking approach which was called for might be better served through greater regard to the advantages of written law.

87. The CHAIRMAN commended the delegation of the Republic of Korea on the quality of its report, its open approach to the dialogue, and the clear and comprehensive replies provided to numerous questions.

88. The main conclusion to be drawn from the discussion was that, thanks to the Government's commitment, an enormous number of positive developments had occurred during the past four years, especially but not exclusively as a consequence of the watchful activity of the Constitutional Court. The situation of human rights had changed radically, even if the Constitution for the moment failed to guarantee all the rights set forth in the Covenant.

89. Various concerns had been voiced by Committee members, in connection, inter alia, with the National Security Law, capital punishment, the right of peaceful assembly and other important issues. He felt sure that those concerns had been duly noted by the delegation; in that connection, he pointed out that only the written comments which would be adopted - in accordance with the Committee's new procedure - at the end of the session would constitute its considered views as reflected in the official documents. He was confident that those views would be taken into account during the formulation of new legislation and the revision of existing laws. Further important improvements were to be expected in the years to come, and he wished the Republic of Korea every success in that endeavour.

90. Mr. Soo Gil PARK (Republic of Korea) said that the meeting with the Committee had been a most valuable occasion for an exchange of views on human rights issues, to which the international community was paying growing attention and which seemed to be increasingly considered as outside the exclusive jurisdiction provided for in Article 2, paragraph 7, of the Charter of the United Nations. Those were welcome developments.

91. In the light of certain remarks by members of the Committee, he wished first to quote the adage that while realism without idealism was immorality, idealism without realism was impotence; and then to suggest that specific contexts and circumstances sometimes had to be taken into account in the interpretation and application of the law, including international treaties. He did so particularly because some concern had been voiced in connection with the inculcation during prisoners' education of what was referred to in the Republic as a "sound national spirit". It should be clearly understood that there was absolutely no connection between that notion and the nefarious

ideologies of Nazism and Hitlerism; the concern was simply to ensure that when convicted persons re-entered society they would be imbued with the traditional cultural values unique to their country and thus capable of adapting to and leading a normal life.

92. In a concluding statement, he expressed pride in the fact that the Republic of Korea, for the first time in its history, had taken the significant step of submitting its human rights record to the Committee for collective evaluation through open and constructive dialogue. The outcome of the deliberations had increased the Government's awareness of its responsibilities as an important member of the democratic community, at the same time enhancing the awareness of all citizens of the rights and freedoms guaranteed under both the Covenant and their country's Constitution. The Committee had helped to place the issue of human rights even higher on the domestic agenda.

93. While he welcomed the constructive observations made, there were some points on which he sharply disagreed. Nevertheless, his delegation was happy with the positive assessment of progress since 1988. The positive comments would be an encouragement to renewed efforts in favour of human rights; criticism would act as an accelerator where further improvement was called for. His delegation's appearance before the Committee testified to the Government's commitment and demonstrated its resolve to proceed steadily along the difficult but rewarding path towards the universally desired goals of human rights. No country could claim a blameless record in human rights, and his country was no exception: what was important was the resolute determination to fulfil its commitment under the Covenant.

94. He assured members of the Committee that their comments would be duly conveyed to his Government and that questions which had not been addressed in sufficient detail because of lack of time would be covered in the second periodic report.

95. The CHAIRMAN thanked the delegation of the Republic of Korea and said that consideration of the initial report of the Republic was thus concluded. The second periodic report would be due on 9 April 1996.

The meeting rose at 6.20 p.m.